APPENDIX

EXCERPT FROM PETITIONER'S BRIEF TO COURT OF SPECIAL APPEALS OF MARYLAND

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM 1993

No. 1830

JOHN H. DOUGLAS,
Appellant,

v.

FIRST SECURITY FEDERAL SAVINGS BANK, INC., *et al.*,
Appellees.

BRIEF OF APPELLANT

JOHN H. DOUGLAS, *pro se*
Attorney for Appellant

VANDER WOUDE, ESQ.
JOHN S. CATTERTON, ESQ.
Attorneys for Appellees

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STATEMENT OF THE CASE

In November, 1992 appellant's attorney filed suit in Prince George's County, Maryland against First Security Federal Savings Bank, Inc. et al to recover damages for fraud and wrongful foreclosure. Also in November, 1992 the Bakers filed a suit in Prince George's County Circuit Court in a case styled Danella Baker and Vinson L. Baker v First Security Federal Savings Bank, Inc., et al, case number Cal 92-20920. The Bakers' suit included some of the same issues that Mr. Baker lost on in his suit in the federal court in Alexandria, Virginia.

Defendants' filed a motion to dismiss both cases based on the doctrines of res judicata and forum of non conveniens.

Appellants' attorney withdrew and Appellant filed an amended complaint to recover damages for fraud, wrongful foreclosure, and violations of Maryland real property articles.

Appellees filed a motion to dismiss the amended complaint. On March 8, 1993, Judge Ross denied Appellees' motion to dismiss case number CAL 92-20920 (E-117). On March 11, 1993 the Bakers filed a "Stipulation Of Dismissal With Prejudice" (E-117A & E-117B) and on the same day, Judge Mason dismissed this action (E-96).

Appellant filed motion for reconsideration and a hearing was set for July 7, 1993. At that hearing the court requested the parties to file a memorandum in support of their positions. The memoranda were filed and the court denied appellant's motion for reconsideration as it determined that appellant was precluded by res judicata from further litigation since he was a "PARTY" by participation in the prior suit.

On November 15, 1993, Appellant filed notice of appeal of court order to dismiss the complaint.

Appellant filed a "Second Affidavit of John H. Douglas" on December 21, 1993 to include documentation that

rebuts the August 6, 1993 Memorandum statements by Appellees that Appellant controlled the prior litigation in Virginia and was present at all depositions. The court below ruled that Appellant could not include the affidavit in the record or record extract on appeal since that document was filed after the notice of appeal. This appeal is from those decisions by the court below.

STATEMENT OF QUESTIONS PRESENTED

A. Whether the Second Affidavit of John H. Douglas filed in the lower court on December 21, 1993 should be part of the record and record extract on appeal for consideration by the Maryland Court of Special Appeals?

B. In federal diversity cases, which law governs the preclusive effects of res judicata and collateral estoppel (federal, host state of original suit, or state of second or subsequent suit)?

C. If appellant's conduct in prior case was sufficient to invoke the principles of preclusion, which doctrine governs, res judicata or collateral estoppel?

D. Whether appellant's participation in prior suit was sufficient to determine that appellant was a "non party" by participation and thus was precluded by res judicata or collateral estoppel?

E. Was Appellant obliged to intervene in the Virginia action?

F. Whether there were identical issues and causes of action in two complaints?

G. Was trial court's initial dismissal of case proper in light of fact the Judge Ross denied Appellees' motion to dismiss the Bakers' suit?

* * * *